



State of Rhode Island and Providence Plantations
RHODE ISLAND BOARD OF EDUCATION
255 Westminster Street
Providence, Rhode Island 02903-3400

Enclosure 6b1
August 20, 2019

Barbara S. Cottam
Chair

**Council on Elementary and
Secondary Education**

Daniel P. McConaghy
Chair

Amy Beretta, Esq.

Colleen A. Callahan, Ed.D.

Karen Davis

Gara Field, Ph.D.

Jo Eva Gaines

Marta V. Martinez

Lawrence Purtill

**Council on Postsecondary
Education**

Timothy J. DelGiudice
Chair

Dennis Duffy, Esq.

Rachelle Green, Esq.

The Honorable Thomas Izzo

Michael Mello

Marianne F. Monte

Barbara Mullen, Ph.D.

Dr. Jeffery A. Williams

December 3, 2019

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation – DCYF v.
Cumberland School Committee

The Appeals Committee of the Council on Elementary and Secondary Education met on November 5, 2019, to hear oral argument on the appeal of the following Commissioner decision:

DCYF v. Cumberland School Committee

RECOMMENDATION: THAT, in the matter of DCYF v. Cumberland School Committee, the Commissioner's decision is affirmed, as presented.

Telephone: (401) 222-8435 **Fax:** (401) 222-6178 **TTY:** (800)745-5555 **Email Address:** infoboe@boe.ri.gov

Website: www.ride.ri.gov/BoardofEducation

The Rhode Island Board of Education does not discriminate on the basis of age, sex, sexual orientation, gender identity/expression, race, color, religion, national origin, or disability.

STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

**DEPARTMENT OF CHILDREN
YOUTH AND FAMILIES**

vs.

**CUMBERLAND
SCHOOL DEPARTMENT**

:
:
:
:
:
:
:

In re M. Doe

DECISION

This is an appeal by the Cumberland School Department (“CSD”) from the decision of the Commissioner of Education (“Commissioner”), dated May 21, 2019, whereby the Commissioner granted a petition by the Rhode Island Department of Children, Youth, and Families (“DCYF”) requesting that CSD reimburse the cost of educational services for student M. Doe (“Doe”) at CSD’s special education rate.

The facts were outlined in the Commissioner’s written decision as follows. Doe was fourteen (14) years old when DCYF filed a *Request for Residency Determination and Designation of Party Responsible for the Education of a Youth Residing in a Residential Facility* (the “Petition”) with the Commissioner on February 8, 2019. Doe was a general education student and was not eligible for special education services. Doe’s mother resided in Cumberland, Rhode Island. A Family Court order placed Doe at the Meadowridge Academy (“Meadowridge”), a private residential facility providing educational services in Swansea, Massachusetts. DCYF had a contract with the non-profit owner of Meadowridge for a daily rate

per child placed at the school. Additionally, the contract did not obligate DCYF to any minimum number of referrals or placements, noted that the school was regulated by Massachusetts and must comply with Massachusetts regulations, and set terms and conditions regarding DCYF's access to and use of placements at Meadowridge.

On or about October 26, 2018, DCYF notified CSD that due to Doe's mother residing in Cumberland, CSD would be responsible for the cost of educational services at the CSD special education rate of \$123.06 per day, for a total of fifteen thousand seven hundred fifty one dollars and sixty-eight cents (\$15,751.68). CSD refused to pay either DCYF or Meadowridge for the educational services provided to Doe.

In the Petition, DCYF requested reimbursement of the cost of educating Doe, a child in DCYF custody placed in a private residential facility that includes educational services pursuant to a Family Court order, at the special education rate under R.I.G.L. § 16-64-1.1. Hearings were conducted on March 26, 2019 and April 22, 2019. CSD argued that the applicable statutes do not require reimbursement for a general education student at the special education rate in any instance. In the alternative, CSD argued that even if the statutes require reimbursement at the special education rate generally, the specific exemption provided under R.I.G.L. § 16-64-1.1(d) applies in this instance because the contract between DCYF and the Meadowridge non-profit owner met the conditions therein. DCYF countered that there is administrative precedent providing that reimbursement for a general education student in DCYF custody placed in a private residential facility is made at the special education rate pursuant to R.I.G.L. § 16-64-1.1(c). Additionally, DCYF argued that the statutory exemption for reimbursement found in R.I.G.L. § 16-64-1.1(d) does not apply to this situation because the relevant contract does not meet the exemption conditions. Specifically, the DCYF contract did not mandate a

predetermined number of seats or fund a program at Meadowridge, and Meadowridge is not licensed by the State of Rhode Island.

In a decision dated May 21, 2019 (the “Decision”), the Commissioner determined that pursuant to R.I.G.L. § 16-64-1.1(c) CSD must reimburse DCYF for the education costs for Doe at the per-pupil special education rate. Evaluating the argument that the use of an indefinite article in R.I.G.L. § 16-64-1.1(c), mandating that the city or town of residence “be responsible to DCYF for a per-pupil special education cost . . . “ (emphasis added), the Commissioner rejected the argument that reimbursement must only be made when the student receives special education services. Citing to the administrative precedent in *DCYF v. Newport School Department*, the Commissioner looked to the provisions of the entire law, including the legislative history. Lastly, the Commissioner noted that the use of an indefinite article merely reflects that the special education rate varies by city and town.

Next, the Commissioner considered the CSD argument that the exemption provided in R.I.G.L. § 16-64-1.1(d) applies here and CSD should not be held responsible for reimbursement. The Commissioner agreed with CSD that the conditions in R.I.G.L. § 16-64-1.1(d)(2) and (d)(3) were satisfied. Meadowridge’s state licensing in Massachusetts is all that is required under R.I.G.L. § 16-64-1.1(d)(2), and Meadowridge operated an approved, on-grounds educational program in accordance with R.I.G.L. § 16-64-1.1(d)(3). However, the contract between DCYF and Meadowridge failed to meet the necessary conditions of the exemption pursuant to R.I.G.L. § 16-64-1.1(d)(1) because it did not require DCYF to pay for a minimum number of predetermined referrals or placements, and did not require DCYF to pay for any part of the facility’s program. Lastly, the Commissioner denied a request for stay of enforcement pending appeal as

they could not meet any of the relevant criteria for granting a stay. The DCYF Petition was granted and the reimbursement was ordered.

CSD appealed to the Council on Elementary and Secondary Education (the “Council”) contending that the Commissioner erred by finding that CSD must reimburse DCYF for a placement that is not a special education placement. We have reviewed the record, the party’s briefs, and considered the oral argument presented. We find that CSD has not presented sufficient grounds for reversal of the Decision under our standard of review.

In considering CSD’s appeal, we are mindful of the standard of review for appeals brought to the Council on Elementary and Secondary Education (“Council”). Review is limited to whether the Commissioner’s decision is “patently arbitrary, discriminatory, or unfair.” Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (R.I. 1975).

The controlling legal issue in this case was first outline by the Commissioner in *DCYF v. Newport School Department*. In that matter, the Commissioner found that R.I.G.L. § 16-64-1.1(c) is the operative subsection. *DCYF v. Newport School Department*, RIDE NO. 19-006A, at page 9. Further, the Commissioner found that the language of the statute and its history make clear that cities and towns must reimburse at the special education rate when DCYF places a child in a residential facility providing educational services. *Id.* In a concurrent matter, the Council agreed with and affirmed the decision of the Commissioner. *See DCYF v. Newport School Department*, Decision of the Council on Elementary and Secondary Education, December 3, 2019. We hereby reference and incorporate that concurrent decision and reasoning. *Id.* at 4-5. In addition to the reasoning outlined in our *DCYF v. Newport School Department* decision, we find no further error in the Decision evaluating the use of the indefinite article “a” in place of a definite article “the” in R.I.G.L. § 16-64-1.1(c). We agree that the use of an indefinite article

appropriately reflects that the rate varies among the cities and towns impacted by this legislation.

Decision at page 10. Next, CSD argues that the use of the phrase “free, appropriate public education” within R.I.G.L. § 16-64-1.1 demonstrates that reimbursement to DCYF is only intended in instances where special education services are guaranteed by federal law. However, assuming arguendo that the General Assembly intended to refer to federal law by using similar phrasing without making direct reference to such laws, the use of the phrase is notably absent from R.I.G.L. § 16-64-1.1(c), the relevant subsection in this matter.

CSD asks the Council to reverse the decisions of the Commissioner, and subsequent affirming of that decision by the Council itself. We decline. The Commissioner correctly applied the law and properly took into consideration the legislative history. No part of the Commissioner’s decision is “patently arbitrary, discriminatory or unfair.” Altman at 405. CSD has presented no grounds to reverse or modify the Commissioner’s decision under the Council’s standard of review.

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2019.

Council on Elementary and Secondary Education,

Daniel P. McConaghy, Chair

December 3, 2019

Amy Beretta, Esq., Appeals Committee Chair

December 3, 2019